

COMMENT SET 16: VENOCO, INC.



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Civ. File Number: CXBZ-106900

September 15, 2006

*VIA EMAIL AND FACSIMILE*

Mr. Peter Strait  
Project Manager  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, California 95825

Re: Responses to Draft Environmental Impact Report for Offshore  
Component of Ellwood Marine Terminal (CSLC EIR No. 730)

Dear Mr. Strait:

This firm represents Venoco, Inc. ("Venoco"), which owns the Ellwood Marine Terminal (the "Terminal" or "EMT"), which includes both onshore and offshore components. As you know, the California State Lands Commission (the "SLC") has prepared a Draft Environmental Impact Report (the "DEIR") in connection with Venoco's exercise of its right to extend State Lease PRC 3904.1 (the "Lease"), pursuant to which the SLC has leased to Venoco submerged land and tidelands off the coast of Santa Barbara County in which the offshore component of the Terminal is located. The offshore operations consist of pumping and transporting oil from Platform Holly (subject to a different SLC lease) by pipeline to the Ellwood Onshore Facility (the "EOF") for processing, by onshore pipeline from the EOF to the Terminal and from the Terminal to a pipeline for loading into the barge Jovallan for distribution. DEIR, p. 1-4. The offshore improvements consist solely of a six-point mooring system, two buoys, a 10-inch-diameter marine loading pipeline and an eight-inch-diameter, 175-foot-long rubber hose (collectively, the "Offshore Improvements"). The "Project", as defined in the DEIR, consists of Venoco's extension of the Lease through February 28, 2013.

As you are probably aware, the SLC originally entered into the Lease with Aminoil, Venoco's predecessor in interest, effective as of March 1, 1983. The Lease superseded an earlier 10-year lease dated February 28, 1968 covering the same Offshore Improvements. The Lease has a 10-year term, but permits the lessee to extend it for two successive 10-year periods "upon such reasonable terms and conditions" as the SLC may impose. Venoco acquired Aminoil's interest as lessee under the Lease effective August 5, 1997, after the first 10-year option was exercised. Venoco timely delivered notice of its intention to extend the Lease for

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another .6 years effective March 1, 2003. In response, SLC staff took the position that an EIR would be required before the Lease would be renewed, a position that Venoco has repeatedly disputed.

VEN-1 We appreciate the opportunity to respond to the DEIR on behalf of Venoco. In short, we have significant concerns regarding the timing and substance of the DEIR. First, Venoco believes that the DEIR should be revised to expand the project description to include Venoco's proposal (the "Pipeline Proposal") referred to in the DEIR as the "Ellwood Oil Pipeline Installation and Field Improvements" or "cumulative project no. 3". DEIR, p. 4-13. The Pipeline Proposal includes: (a) construction of a new 10-inch onshore pipeline to transport oil the ten miles from the EOF to the existing pipeline system at Las Flores Canyon; (b) decommissioning and abandonment of the Terminal and Line 96 and discontinuation of use of the barge Javalan; (c) adjustment of the boundaries of two SLC lease areas (PRC 3120.1 and 3242.1) and drilling of up to 40 new wells with such areas; (d) replacement of the existing pipeline and cable between Platform Holly and the EOF; and (e) possibly various improvements to the EOF, subject to the approval of the City of Goleta. The Pipeline Proposal would contemplate increasing oil production (and thus throughput) up to the maximum permitted capacity of 13,000 BPD. DEIR, p. 4-13 (the replacement of the existing crane on Platform Holly has already been accomplished and is no longer part of the proposal).

In brief, the "Project" identified in the DEIR is Venoco's short-term plan to continue the existing Lease operations. The Pipeline Proposal is Venoco's long-term plan and includes constructing a 10-mile onshore oil pipeline and thereafter discontinuing the use of the Offshore Improvements and the barge Javalan to transport oil to the EOF. There are both legal and practical reasons for preparing a single EIR analyzing both the Project and the Pipeline Proposal as a single project under the California Environmental Quality Act ("CEQA").

VEN-2 As a legal matter, CEQA prohibits artificially "splitting" a project by considering only certain aspects of it in an EIR. The DEIR simply does not present a complete picture of Venoco's plans. In fact, the DEIR chops up the Pipeline Proposal into three pieces: (a) it considers the entire proposal as a related project having potential cumulative impacts; (b) it considers only the pipeline construction portion of the proposal as one of the alternatives to the Project; and (c) it considers the impacts of the Pipeline Proposal as if they were impacts of the Project. As a practical matter, combining the Project and all of the elements of the Pipeline Proposal into a single coherent analysis in a single document would be more efficient and would conserve the resources of the SLC, Venoco and the public, without any significant delay in the ultimate process.

VEN-3 Second, as Venoco has frequently explained, the preparation of the DEIR for the Project is improper because the extension of the Lease is categorically exempt from environmental review under CEQA pursuant to the "Class 1" categorical exemption set forth in Section 15301 of the State CEQA Guidelines (the "Guidelines"). The Class 1 Exemption, also

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com. ↑ known as the "existing facilities" exemption, expressly includes the leasing of an existing facility "involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Guidelines § 15301.

VEN-4 The DEIR attempts to show that the Project would result in significant impacts in two different ways. With respect to several alleged potential impacts, the DEIR asserts that there would be an increased likelihood of impacts because the Lease would continue in the future for several more years (the "temporal" effect). However, this argument is inconsistent with CEQA, applicable judicial decisions and the very existence of the Class 1 exemption. If the SLC were correct, the Class 1 exemption would be rendered a nullity, as every existing facility could be said to have additional impacts simply by operating longer. As discussed below, the SLC's position is not well-taken and the Class 1 exemption applies to the extension of the Lease.

VEN-3 With respect to other potential alleged impacts, the DEIR asserts that, to the extent that Venoco expands the operations of the Terminal up to the level of throughput currently permitted, the difference between the existing and the permitted use represents an increase which may result in significant impacts to the environment (the "expansion" effect). This is simply wrong. As discussed below, the Class 1 Exemption also applies to any potential increase in the current operation of the Terminal as long as it operates within its currently permitted capacity. Thus, the appropriate baseline in determining whether the Class 1 exemption applies is the current permitted capacity of the facility. Since no expansion beyond the current permitted capacity is contemplated or anticipated as a result of the Lease extension, there simply is no expansion associated with the Project.

VEN-6 Essentially, there is a decision to be made. If the SLC agrees that a single EIR should be prepared covering the entire Venoco plan – the Project and the Pipeline Proposal – then all of the attributes and impacts of the entire plan can be considered in that framework. If the SLC does not agree, then the Class 1 exemption applies to the Project, the DEIR is unnecessary and unwarranted and the environmental impacts of the Pipeline Proposal should be considered in connection with the EIR for that proposal. Either way, there should only be a single EIR under review and the Pipeline Proposal should not be simultaneously treated (in whole or in part) as an element of the Project, an alternative to the Project and a separate project.

VEN-7 Third, the SLC's unprecedented (and incorrect) premise that the DEIR must consider the temporal effects of extending the existing Lease leads to fundamental contradictions with respect to the DEIR's characterization of the environmental baseline. Initially, the DEIR clearly (though incorrectly) defines the baseline as being current operations as opposed to current permitted capacity, and makes no reference to the supposed temporal effect. DEIR, p. 1-4. The DEIR then concludes that "[o]perating at the permitted capacity represents the incremental increase in operations of the proposed Project for the purposes of the EIR". *Id.* p. 1-6. In other words, the baseline is the existing operations and the environmental impacts will be measured based on the difference between the permitted capacity and the existing operations. In some

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cases, such as the discussion of the increase in the probability of oil spills, this standard is applied and the DEIR focuses on the supposed increase in the number of barge trips if the Project operated at permitted capacity. DEIR, p.4.2-54.

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However, the DEIR does not consistently apply this standard. In many cases, the environmental analysis focuses on the temporal impacts, which by definition ignores the environmental baseline and effectively assumes that there are no existing operations. For example, in discussing certain geological impacts, the DEIR acknowledges no change from the baseline, but contends that the Lease extension would "extend the risk" or that "in the future" an impact could result, even though that same risk currently exists and has existed throughout the history of the facility. DEIR, pp. 4.1-12-13. Frequently, there is no indication of any increase over the baseline, and yet mitigation measures are proposed. DEIR, pp. 4.2-58-59. For example, in its discussion of the potential for pipeline leaks, the DEIR concedes that "[o]il spill volumes associated with the proposed Project are not estimated to increase as the same equipment will be used for the proposed Project as for the current operations. Oil spill response equipment and capabilities appear to be in compliance with regulations for the current operations." DEIR, p. 4.2-59. It is not clear in these cases whether the DEIR is implicitly applying its temporal theory or whether it is simply conceding that there is no increase over the baseline (although the DEIR nevertheless proposes mitigation measures with respect to these nonexistent impacts).

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Fourth, the project description is inaccurate and inconsistent in several respects. The DEIR describes the Project as "the continued operation of the EMT facilities under a new 10-year State lease." DEIR, p. 2-3. This statement is inaccurate in numerous respects. First, as the DEIR acknowledges, only the Offshore Improvements are subject to the Lease – not the onshore equipment and facilities associated with the Terminal. DEIR, pp. 2-1, 2-2. Second, the idea that the Project involves a new lease is fiction; the DEIR specifically acknowledges the continued existence of the Lease, Venoco's extension option through 2013 and Venoco's notice to the SLC that it wishes to exercise that option. DEIR, p. 2-2. Third, the remaining term of the Lease is only 7 years, not 10 years – through February 28, 2013. Finally, embedded in the project description and throughout the DEIR is the false assumption that the SLC has the right to approve or reject the extension of the Lease. DEIR, p. 3-7 (incorrectly stating that under the No Project Alternative, the Lease would not be renewed). As noted above, however, despite the DEIR's effort to rechristen the Lease extension, Venoco has the legal right to extend the Lease through February 28, 2013 and the SLC has no legal authority to deny that extension. Under the Lease, it can only require "reasonable terms and conditions" with respect to the extension. Rather, the SLC's discretionary authority is simply the decision of what reasonable terms and conditions should appropriately be required in connection with the extension.

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Fifth and finally, the DEIR's analysis of environmental impacts and the resulting mitigation measures is severely flawed for numerous reasons. The DEIR's use of an inconsistent and inaccurate environmental baseline and an inaccurate project description frequently make a correct analysis of the potential impacts of the Project virtually impossible. Moreover, contrary

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to the Guidelines, the "thresholds of significance" used often lack even a rudimentary basis for determining whether an impact is significant. See Guidelines § 15064.7(a). The Guidelines call for "identifiable, quantitative, qualitative or performance level" to determine whether an effect is significant. Instead, as just one example, the DEIR deems a hazardous materials impact significant if "[o]perations would increase the probability or volume of oil spills". By how much? Over what period? In the words of Gertrude Stein, "there's no there there" – the thresholds of significance have no thresholds against which one can determine significance. Finally, the DEIR improperly relies on speculation, supposition and conjecture in place of facts, sometimes in multiple layers, to find a significant impact.

Given the problems the DEIR has in properly identifying impacts, it is not surprising that the mitigation measures supposedly designed to mitigate those impacts are improper. Venoco is willing to accept certain of the mitigation measures as a gesture of good faith, notwithstanding that most of them are unreasonable, unnecessary and improper under CEQA. Many of the measures, however, are improper and must be rejected, either because they are outside of the SLC's jurisdiction to impose or because they are infeasible, for economic, legal, technological or other considerations. CEQA, §21081(a).

We discuss each of these issues in greater detail below.

I.

ANALYSIS

A. Revise the DEIR to Incorporate Pipeline Proposal As Part of the Project.

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As discussed above, Venoco strongly believes that the DEIR should be substantially revised (and then recirculated) to include the Pipeline Proposal as part of the project. In a nutshell, the Project as defined in the DEIR is Venoco's short-term plan to continue to use the Offshore Improvements, while the Pipeline Proposal is Venoco's long-term plan and includes, among other components, constructing a 10-mile onshore oil pipeline and thereafter discontinuing the use of the Offshore Improvements and the barge Jovolan. The DEIR also considers these two elements – but not other critical elements of the Pipeline Proposal detailed above – as one of the three alternatives (including the No Project Alternative) to the Project. DEIR, p. 3-11, "Pipeline Transportation Option". In addition, the DEIR essentially includes the impacts of the Pipeline Proposal – the increase in production up to the existing permitted capacity – as an impact of the Project and a justification for most of the proposed mitigation measures.

The DEIR attempts to justify the exclusion of the Pipeline Proposal from the project description by stating that Venoco's application for the Pipeline Proposal is incomplete and its schedule is unknown. DEIR, p. 4-13. That is untrue. In fact, the SLC deemed the application

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complete on March 30, 2006 and we understand the SLC has now retained a consultant (the same consultant that prepared the DEIR for the Project) to begin preparing a draft environmental impact report. We also understand that the SLC anticipates holding a hearing on the DEIR for the Project in February 2007 and for the Pipeline Proposal in September 2007.

We believe there are significant legal and practical reasons for preparing a single EIR that analyzes both the Project and the Pipeline Proposal as a single project under CEQA.

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As a legal matter, a project must be fully analyzed in a single environmental document. An agency may not split a project into two or more segments with mutually exclusive environmental documents. Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo, 172 Cal. App. 3d 151, 165 (1985). "Project" means "the whole of an action, which has the potential for resulting in a physical change in the environment, directly or indirectly . . ." Guidelines § 15378(a). To the extent any environmental review of the Project is required at all (a premise Venoco rejects, as discussed below), the Draft EIR unlawfully splits Venoco's project by considering only the short-term plan and not the long-term component. In fact, we understand that one of the speakers at the SLC's recent public forum on the DEIR made the same point. A single EIR would also be more informative to the SLC and the public and would yield a more complete and accurate analysis of the entire project and its potential impacts. It would also avoid some of the tricky baseline issues that currently complicate the DEIR. The DEIR's discussion of incomplete elements of the Pipeline Proposal as an alternative to the Project does not remedy the problem, but simply makes the discussion more disjointed and confusing.

As a practical matter, a single document would be far more efficient and would save the SLC, the public and Venoco substantial unnecessary duplication of effort. We believe that the DEIR can be revised and recirculated in time for the SLC to consider the overall project by the September 2007 date currently anticipated for the Pipeline Proposal.<sup>1</sup>

B. The Preparation of the DEIR Was Improper Under CEQA.

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As Venoco has repeatedly explained to the SLC, the preparation of the DEIR was improper because the extension of the Lease is categorically exempt from environmental review under CEQA pursuant to the "Class 1" categorical exemption set forth in the Guidelines. The Class 1 exemption, also known as the "existing facilities" exemption, expressly includes the leasing of an existing facility "involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Guidelines § 15301. Among the examples of

<sup>1</sup> In light of the DEIR's failure to fully or properly address the Pipeline Proposal, and without waiving any objections, it is premature to discuss in depth the mitigation measures proposed for the truncated version of the Pipeline Proposal referred to in the DEIR as the Pipeline Transportation Option. Those measures should instead be addressed as part of the expanded DEIR (if the SLC concurs with Venoco's recommendation).

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"existing facilities" that are included within the exemption are "[e]xisting facilities of both investor and publicly-owned utilities publicly used to provide electric power, natural gas, sewerage, or other public utility services". *Id.* The SLC's own regulations similarly provide that continued operation (in an acceptable state of repair) of a facility pursuant to an SLC lease is exempt from further CEQA review. 2 Cal. Code Regs. § 2905(a)(2).

The DEIR attempts to show that the Project would result in significant impacts in two distinct ways. First, it asserts that there would be an increased likelihood of impacts because the Lease would continue in the future for several more years (the "temporal" effect). For example, it contends that the extension of the Lease "increases the lifetime probability of leaks or spills." DEIR, p. 4.4-30. However, the same can be said for any continuation of an existing use – one can always imagine a future low-probability event that would necessarily increase in mathematical probability over time. Under the SLC's approach, the Class 1 exemption would be rendered a nullity, as every project would have such an impact. The fact that the Class 1 exemption exists is in itself a repudiation of this contention. Thus, in *Bloom v. McGurk*, 26 Cal. App. 4th 1307, 1313-15 (1994), the court held that the Class 1 exemption applied and no environmental analysis was required in connection with the continued operation of a hazardous waste incineration facility. Under the SLC's view, every existing project would be subject to complete re-evaluation for any permit renewal or extension. The court in *Bloom* could "discern no legislative or regulatory directive to make each such renewal an occasion to examine CEQA compliance at every facility built in the last 24 years." *Id.* Accordingly, the extension of the Lease is clearly subject to the Class 1 exemption.

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Second, the DEIR asserts that, to the extent that Venoco expands the operations of the Terminal up to the level currently permitted, the difference between the actual and the permitted use represents an increase that may result in significant impacts to the environment (the "expansion" effect). As discussed below, however, the Class 1 Exemption also applies to any potential increase in the current operation of the Terminal as long as it operates within its currently permitted capacity. Thus, the appropriate baseline in determining whether the Class 1 exemption applies is the current permitted capacity of the facility. Since no expansion beyond the current permitted capacity is contemplated or anticipated as a result of the Lease extension, there simply is no expansion associated with the Project.

As noted above, the Class 1 exemption applies to an existing facility, even where that facility is operating substantially below full capacity. For example, in *Committee for a Progressive Gilroy v. State Water Resources Control Bd. ("Gilroy")*, 192 Cal. App. 3d 847 (1987), the Regional Water Control Board originally set a maximum flow of 6.1 million gallons per day for a municipal sewer wastewater treatment plant. The final EIR for that project was not judicially challenged. 192 Cal. App. 3d at 852. Subsequently, the cities that operated the plant encountered aeration and percolation problems in the operation of the facility. As a result, the Regional Board reduced the permitted daily flow to a maximum of 5.15 mgd. After the cities took remedial action to correct those problems, the Regional Board approved increases in the

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maximum flow from 5.15 mgd back to 6.1 mgd, the original maximum permitted flow. The Regional Board's orders were upheld by the State Water Resources Control Board, which concluded that the Class 1 exemption applied to its action. *Id.* at 852-53. The court upheld the use of the Class 1 exemption on the grounds that the plant was originally built and approved for 6.1 mgd in full compliance with CEQA. *Id.* at 864-65.

Therefore, no environmental review is required as long as the Terminal operates within its permitted capacity and this exemption applies regardless of whether the project was originally subject to CEQA review. *Bloom*, 26 Cal. App. 4th at 1315 (holding that the Class 1 exemption applied to the renewal of permits for the continued operation of an existing medical waste treatment facility, notwithstanding that no CEQA document had ever been prepared for the facility). As *Bloom* explains, it is far too late to challenge the permitted capacity approved long ago.

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For the reasons stated above, there is no expansion of the approved use. Moreover, there is no "reasonable possibility that the Lease extension will have a significant effect on the environment" due to "unusual circumstances". Guidelines § 15300.2(c). For the unusual circumstances exception to the Class 1 exemption to apply, there must be both (1) a reasonable possibility that the activity will have a significant effect on the environment and (2) unusual circumstances causing the significant effect. Here, there is no "reasonable possibility" of significant impacts with respect to the Project because (a) the single potentially significant impact identified by SLC staff (an oil spill) is statistically very unlikely, and therefore does not support the conclusion that there is a reasonable possibility that an oil spill "will" occur, and (b) the risk of an oil spill existed when the Lease was executed in 1983 and SLC has not produced any evidence that this risk has substantially increased over the past 21 years. With respect to the "unusual circumstances" prong, there are no unusual circumstances here because (i) there is nothing unusual about the Offshore Improvements that distinguish them from other offshore facilities in the Santa Barbara County area and (ii) the SLC has not identified any changing circumstances, such as new evidence indicating an increase risk of an oil spill, that would justify environmental re-evaluation under CEQA. Because we have previously explained to you Venoco's position on this issue on several occasions, and the SLC has nevertheless elected to prepare the DEIR notwithstanding such position, we will not belabor the point here, but we hereby incorporate by reference Venoco's and our prior correspondence to the SLC and request that all such correspondence be included in the administrative record, including without limitation our letter to Marina Brand dated August 13, 2004. We also emphasize that Venoco does not waive, and has not waived, in any respect its claim that no EIR is required for the Project.

In summary, if the SLC concurs with Venoco's recommendation that a single EIR should be prepared covering the entire Venoco plan – the Project and the Pipeline Proposal – then all of the attributes and impacts of the entire plan can and should be considered in that framework. Otherwise, the Class 1 exemption applies to the Project, the DEIR is unnecessary and



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unwarranted and the environmental impacts of the Pipeline Proposal should be considered in connection with the EIR for that proposal. In either event, there should only be a single EIR under review. The Pipeline Proposal should not be simultaneously treated (in whole or in part) as an element of the Project, an alternative to the Project and a separate project.

C. The Environmental Baseline Is Inaccurate and Inconsistent.

The DEIR expressly identifies the existing environmental baseline as Venoco's current operations, i.e., production of approximately 4,000 barrels per day ("BPD"), delivery of the oil to the EOF for processing, transfer of the processed oil by Line 96 to the Terminal and from the Terminal to a pipeline for loading into the barge Jovanan. DEIR, p. 1-4. The DEIR also acknowledges that under current conditions, Venoco is permitted by the Santa Barbara County Air Pollution Control District (the "SBAPCD") to transport up to 13,000 BPD. *Id.* The DEIR then concludes that "[o]perating at the permitted capacity represents the incremental increase in operations of the proposed Project for the purposes of the EIR". DEIR, p. 1-6. In other words, the environmental baseline is existing operations and the impacts will be measured based on the difference between the permitted capacity and the existing operations.

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This baseline is not appropriate, given the holdings in Bloom and Gilroy. The DEIR cannot ignore the fact that part of the baseline is that Venoco is currently legally permitted by the SBAPCD to operate at the permitted capacity, regardless of current operating levels and regardless of the SLC's decision on the Project.

In addition, this baseline is not consistently applied in the DEIR when analyzing the Project impacts. In many cases, the environmental analysis focuses on the temporal impacts, which by definition ignores the environmental baseline and effectively assumes that there are no existing operations. For example, in discussing certain geological impacts, the DEIR acknowledges no change from the baseline, but contends that the Lease extension would "extend the risk" or that "in the future" an impact could result. DEIR, pp. 4.1-12-13. But this same risk currently exists and has existed throughout the history of the facility. This temporal baseline, as applied by the DEIR, effectively treats the Project as if no current operations are ongoing, in direct contradiction to the DEIR and CEQA requirements. Similarly, with water quality impacts, the DEIR observes that "lease renewal would extend the risk of potential failure" and that the "Project increases the lifetime probability of leaks or spills." DEIR, p. 4.4-30. Again, this essentially applies a zero baseline to the Project, contrary to CEQA. In one case, both baselines were used. With respect to impacts of an oil spill on biological resources, the DEIR asserts both that the expansion would increase the risk of an oil spill and that the extension of the Lease "extends the lifetime for an incidence of leaks or spills to occur." DEIR, p. 4.5-92. Clearly, such an approach is inconsistent with CEQA requirements. Guidelines §15125(a).

In other cases, it is not clear what baseline is being used. For example, in its discussion of the potential for pipeline leaks, the DEIR concedes that "[o]il spill volumes associated with

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the proposed Project are not estimated to increase as the same equipment will be used for the proposed Project as for the current operations. Oil spill response equipment and capabilities appear to be in compliance with regulations for the current operations." DEIR, p. 4.2-59. In the discussion of the Project's potential impact on fishing in the area, one can literally search the entire text without finding any mention of the existing environmental baseline or how the Project would result in increased impacts on fishing operations. DEIR, pp. 4.5-86, 4.5-87. In these instances, the DEIR may be implicitly applying its temporal theory or it may simply be conceding that there is no increase over the baseline (although the DEIR nevertheless proposes mitigation measures with respect to these nonexistent impacts).

Two of the central purposes of CEQA are to inform governmental decisionmakers and the public about the potential significant environmental effects of a project and to identify ways that environmental damage can be avoided or significantly reduced. Guidelines §§ 15002(a) and (b). These purposes cannot be achieved without a consistent and accurate baseline.

D. The Project Description Is Inaccurate and Inconsistent:

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The DEIR describes the Project as "the continued operation of the EMT facilities under a new 10-year State lease." DEIR, p. 2-3. There are several inaccuracies in that single sentence. First, as the DEIR acknowledges, only the Offshore Improvements are subject to the Lease—not the onshore equipment and facilities associated with the Terminal. DEIR, pp. 2-1 – 2-2. Neither Platform Holly, nor the EOF, nor Line 96 are part of the Project or subject to the Lease. As the DEIR acknowledges, the EOF, Line 96 and the onshore portion of the Terminal are under the jurisdiction of other authorities. DEIR, pp. 2-1, 2-2. Second, the idea that the Project involves a new lease is a pure fiction; the DEIR specifically acknowledges the continued existence of the Lease, Venoco's extension option through 2013 and Venoco's notice to the SLC that it wishes to exercise that option. DEIR, p. 2-2. Third, the remaining term of the Lease is only seven (7) years, not ten (10) — through February 28, 2013. This apparently minor misstatement is extremely significant in that the DEIR calculates the increase in spill probability based on a 10-year lifetime, rather than the 7-year lifetime of the Project, thereby overstating the probability of a spill by at least one-third. DEIR, p. 4.2-55.

Finally, embedded in the Project description and throughout the DEIR is the assumption that the SLC has the right to approve or reject the extension of the Lease. See DEIR, p. 3-7 (incorrectly stating that under the No Project Alternative, the Lease would not be renewed). As noted above, however, despite the SLC's effort to dance around the Lease extension, Venoco has the legal right to extend the Lease through February 28, 2013 and the SLC has no legal authority to deny that extension. Under the Lease, it can simply require "reasonable terms and conditions" for the extension. Accordingly, the discretionary project approval by the SLC (which is required to trigger any CEQA requirement) is simply the decision of what reasonable terms and conditions should appropriately be required in connection with the extension.

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It should be noted (as previously discussed with SLC staff), that the inaccurate Project Description flows through the DEIR, infecting other sections as well. For example, because Venoco has an unconditional right to extend the Lease for an additional period of 10 years, the No-Project Alternative should be the continued operation of the Offshore Improvements with no changes. If the SLC takes no action on the Project -- the essence of the No-Project Alternative -- the status quo ante would continue and Venoco would continue operating under the Lease through February 28, 2013.

E. The DEIR Incorrectly Identifies Significant Impacts and Imposes Improper Mitigation Measures.

1. Impacts Deemed Significant Are Not. The DEIR improperly determines that significant impacts exist for at least three reasons. First, as discussed in Section C, above, the DEIR uses an inconsistent and inaccurate environmental baseline. Second, the DEIR uses significance criteria that provide no basis for justifying significant impacts. Third, the DEIR inappropriately uses supposition and speculation to find significant impacts. Each of these flaws are discussed in turn below.

a. Inaccurate Baseline and Project Description.

As discussed in Section C, above, the DEIR uses an inconsistent and inaccurate environmental baseline, making a correct analysis of the potential impacts of the Project virtually impossible. This difficulty is heightened by the inaccuracies in the Project description, as discussed in Section D, above.

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For example, the DEIR finds a significant impact from the Project because "in the future", winter storms could expose 30-foot spans of the loading pipeline and beach scour could cause the pipeline to settle and thereby "result in structural damage and rupture of the pipeline." DEIR, p. 4.1-13. As noted above, the environmental baseline established by the DEIR is "the incremental increase in operations of the proposed Project for the purposes of the EIR." DEIR, p. 1-6. It is fundamental that a significant effect means a "substantial, or potentially substantial, adverse change" in the environment. Guidelines §15382; Bloom, 26 Cal. App. 4th at 1313. But the DEIR does not contend that there is any change in the Project from baseline conditions that could possibly cause this impact. Instead, the only "change" is temporal -- in the future there could be a severe winter storm that could cause beach scour and expose pipes (and in fact, as acknowledged by the DEIR, this is happened numerous times, without any resulting leaks or other impact to the environment). DEIR, p. 4.1-13. There is not even a suggestion that an increase in Venoco's operations would change the environment in any manner or otherwise affect the amount of beach scour. There is no relationship, real or imagined, between the projected incremental increase in Venoco's operations and the frequency, severity or effects of beach scour. In short, there is no "impact" to measure.

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Similarly, there is no change – and thus no significant impact – associated with the fact that "weathering-induced corrosion could substantially damage structural components of the EMT" or the fact that "structural components of the EMT are exposed to weathering and have the potential to leak". DEIR, pp. 4.1-14, 4.1-15. Again, application of the "temporal" baseline results in the improper classification of an impact as significant.

The inclusion of onshore operations in the Project description also creates significant impacts where none exist. For example, the DEIR asserts that the Project "could potentially result in increased nuisance odor events" due to "increased barge loadings and increased potential for an oil spill". DEIR, p. 4.3-23. It found such increase to be significant, notwithstanding that the SBAPCD analyzed Venoco's Terminal and barge operations and found only one out of over 100 complaints was actually linked to the operations of the Terminal and none was linked to the barge. DEIR, pp. 4.3-13, 4.3-14, 4.3-23. Moreover, there was "no obvious correlation between observed spikes of hydrogen sulfide and barge loadings." DEIR, p. 4.3-13. Nevertheless, the DEIR proposes that additional emission control devices be installed on the onshore Terminal tanks as well as on the barge Jovalan. Again, there is no evidence of any odorous impact from the asserted increased barge loadings and no logical connection between such impacts and additional emission control devices on Terminal tanks (and, of course, neither measure would mitigate odors arising from an oil spill, the purported impact originally advanced by the SLC to justify the preparation of the DEIR).

b. The "Thresholds of Significance" Do Not Establish Thresholds Or Significance.

VEN-15


The Guidelines call for "identifiable, quantitative, qualitative or performance level" criteria to determine whether an effect is significant. Guidelines § 15064.7(a). Instead, the DEIR adopts "significance criteria" that lack any discernible criteria for determining whether an impact is significant. Although virtually every category of environmental impact is implicated, a few examples will suffice as to what conditions will allow the DEIR to deem an impact significant (emphasis is supplied):

- Deterioration of structural components of the EMT due to corrosion, weathering, fatigue or erosion that could reduce structural stability [Geological Resources, DEIR, p. 4.1-11];
- Ground motion due to a seismic event that could induce liquefaction, differential settlement, or lateral spreading that could damage structural components [Geological Resources, DEIR, p. 4.1-12];

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- There is a potential for fires, explosions, spills of flammable or toxic materials, or other accidents from the EMT or from barges at the loading facilities that could cause injury or death [Hazardous Materials, DEIR, p. 4.2-53];
  - Operations would increase the probability or volume of oil spills into the environment [Hazardous Materials, DEIR, p. 4.2-53];
  - [I]f current or future operations may not be consistent with Federal, state or local regulations [Hazardous Materials, DEIR, p. 4.2-53];
  - Allow land uses that create objectionable odors . . . [Air Quality, DEIR, p. 4.3-19];
  - Project operations that change background levels of chemical and physical constituents or elevate turbidity producing long term changes in the receiving environment . . . thereby impairing the beneficial uses . . . [Water Quality, DEIR, p. 4.4-26];
  - Potential for the movement or migration of fish or wildlife to be impeded [Biological Resources, DEIR, p. 4.5-68];
  - Loss or damage to commercial fishing or kelp harvesting equipment [Biological Resources, DEIR, p. 4.5-68];
  - Conflicts with planning efforts to protect the recreational resources of the project area [Land Use, DEIR, p. 4.7-14];
  - Residual impacts on sensitive shoreline lands, and/or water and non-water recreation due to a release of oil [Land Use, DEIR, p. 4.7-15];
  - The project is inconsistent with public policies, goals, plans, laws, regulations or other directives concerning visual resources [Aesthetics/Visual Resources, DEIR, p. 4.11-12]; and
  - Routine operations and maintenance visually contrast with or degrade the character of the viewshed [Aesthetics/Visual Resources, DEIR, p. 4.11-12].

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These thresholds of significance are vague, ambiguous and utterly unhelpful in attempting to determine if any given impact is actually significant. They provide no magnitude of impact nor do they permit any comparison between existing and proposed uses. If the standard for finding a significant impact is that there is a "potential for fires" that "could cause injury", virtually every project imaginable would have significant Hazardous Materials impacts. What does it mean to "increase the probability" of oil spills or "change background levels" of chemicals or cause "loss or damage" to fishing equipment or cause "residual" impacts, without any indication of the magnitude of the action?

The lack of guidance is compounded by the fact that the "criteria" also give no indication of the environmental baseline or reveal that they must be tied to the incremental effect of the Project. Thus, even if you could determine when the potential to impede fish movement actually becomes significant, that does not establish when the purported additional impacts caused by the Project would significantly impede fish movements beyond the current level.

Of course, specific objective criteria are not required by CEQA, even though they are preferred where possible. The DEIR did occasionally include some objective criteria, such as with Air Quality or Biological Resources, making the vague criteria stand out even more. See DEIR, pp. 4.3-19 and 4.5-67 ("Activities that would affect kelp and aquaculture harvest areas by 5 percent or more"). Criteria must be specific enough to assist the SLC and the public in determining whether a given impact is or is not significant. This, the DEIR "criteria" wholly failed to accomplish.

c. Impacts in the DEIR Are Based on Excessive Speculation.

VEN-16

As noted above, the DEIR improperly uses speculation, supposition and conjecture for facts, some times in multiple layers, to find a significant impact, when the actual probability is remote. As just a single example, the DEIR concludes that there would be a potentially significant cultural resource impact because if there was a significant oil spill during the remaining 7-year term of the Lease and if that spill reached an area having cultural artifacts and if those artifacts are still intact and not previously disturbed and if those artifacts were disturbed during clean-up operations, the resulting damage to the artifacts would be a significant impact. DEIR, pp. 4.6-8, 4.6-9. There are many obvious problems with this chain of improbables. One is that, according to the DEIR, the likelihood of a spill of more than 1,000 gallons, if the Terminal is operating at permitted capacity, is  $6.9 \times 10^{-3}$  per year, even the likelihood of a spill of 100 gallons is predicted to be  $1.9 \times 10^{-2}$  per year. DEIR, p. 4.2-55. The probability of the oil hitting an undisturbed spot on the shoreline is similarly unlikely. Although the DEIR does not disclose this speculative probability, it does acknowledge that the shoreline is regularly disturbed by strong winds and tides (as well as human activity). DEIR, p. 4.1-13. The

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DEIR states that there are two cultural resource sites within ¼ mile of the Terminal, but the DEIR does not disclose how far these sites are from the shoreline where the theoretical oil spill would occur or whether they are located on lowlands where the oil would be likely to actually reach. Simply stated, to find that this long chain of suppositions and improbabilities constitutes substantial evidence of a significant adverse impact defies credulity.

Similarly, the DEIR asserts that the increased visual presence of the barge Jovalan – from two trips a month to as many as seven trips a month – would constitute a significant visual impact. DEIR, p. 4.11-13. The DEIR does not identify which of its significance criteria are implicated by the occasional presence of the barge Jovalan one-half mile offshore. It does not indicate how "dominant" the Jovalan would appear on the horizon at this distance. It does not indicate how many ships, boats or other vessels pass by the same location, or how frequently they do so. It does not reference the presence of other objects are visible from the nearby coastline. In short, there is simply no substantial evidence supporting the DEIR's conclusion that this would constitute a significant adverse impact.

## 2. Mitigation Measures Are Improper.

### a. Acceptable Mitigation Measures.

Notwithstanding that Venoco believes the DEIR is unnecessary and that a substantial number of the proposed mitigation measures are improper or unnecessary, Venoco is willing to accept certain of the mitigation measures in the spirit of cooperation and as a gesture of good faith. The measures that Venoco is willing to accept are the following:

VEN-17

- (1) GEO-3a (monitoring of exposed portion of pipeline); acceptable in principle, subject to changes necessary to make program workable for Venoco, including adopting a more scientifically justified length of free-spans requiring remedial action;
- (2) GEO-4a (applying BMPs in connection with work disturbing ground);
- (3) HM-1a (reduce hydrogen sulfide content); acceptable in principle, subject to changes necessary to make program workable for Venoco. Venoco already operates hydrogen sulfide strippers at EOF to reduce the hydrogen sulfide content of the oil prior to storage onsite and transportation to BMT and Venoco is willing to investigate the options available to further optimize the existing oil

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- stripping operation for maximum effectiveness, if it can do so feasibly and without endangering the EOF's current legal operating status within the City of Goleta or requiring new permits or approvals;
- (4) HM-1b (develop tank maintenance program); acceptable in principle, subject to changes necessary to make program workable for Venoco, including that tanks should conform to applicable, rather than current building codes, and that inspections be performed every 10 years, consistent with applicable law;<sup>2</sup>
  - (5) HM-7a (drain protections);
  - (6) HM-8a (training);
  - (7) AQ-1a (barge emission reduction program if more than 75 barge trips in any consecutive 12-month period);<sup>3</sup>
  - (8) AQ-1b (turning off vessel engines when not moving or mooring);
  - (9) BIO-1a (offshore inspections) – acceptable provided references to "other regulatory agency" are struck;
  - (10) BIO-1b (training) – acceptable in principle, subject to changes necessary to make program workable for Venoco;
  - (11) BIO-4a (using designated traffic corridors);
  - (12) BIO-7b (updating OSCP) – acceptable in principle, subject to revisions deemed necessary by Venoco;

<sup>2</sup> Venoco notes that since Venoco took over operation of the Terminal, the tanks have been inspected numerous times per API guidelines and repairs have been made to address any issues brought up by the inspections. The significant repairs done in 2005 as noted in the DEIR were completed in accordance with established industry guidelines. Under API guidelines, no internal inspection is required for another ten years.

<sup>3</sup> This measure is far more directly tied to the extent of the impact it is supposedly mitigating than the other measures. Many currently unacceptable, improper or infeasible measures could be made more reasonable if they only took effect upon a specified increased level of operation being achieved. This could be a matter for discussion with the SLC.



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(13) CR-1a (revising OSCP to cover cultural resources).

b. Mitigation Measures Unnecessary Because There Is No Significant Impact.

A number of the proposed mitigation measures are improper because the impact analysis was faulty and properly analyzed there is no significant impact required to be mitigated. These mitigation measures are discussed in order below.

VEN-19

- (1) GEO-5a: Requires Venoco to cease operations and inspect all Terminal pipelines and storage tanks following any 4.0 earthquake in the region, until the SLC authorizes Venoco to restart operations. The impact analysis acknowledges, as it must, that "[s]eismic hazards are common to the Santa Barbara region and are not increased by the Project". DEIR, p. 4.1-18. Moreover, this measure relates solely to onshore Terminal operations not subject to the Lease. The DEIR attempts to justify this measure by noting that a strand of a potentially active fault (meaning a fault that has shown evidence of activity during the last 1.6 million years) was recently discovered as running under the Terminal. DEIR, pp. 4.1-10, 4.1-18. Nevertheless, there is no incremental Project impact when compared to the baseline risk of earthquakes and thus there is no significant impact required to be mitigated.

Notwithstanding the foregoing, Venoco is willing to accept the mitigation measure in concept, subject to reaching agreement on acceptable language with the SLC. Among other things, a shut-down should only occur upon a reading of 13% of G, which is the standard for the Line 96 pipeline and more accurate for Terminal operations than the Richter scale measurement.

VEN-20

- (2) HM-3a: Requires Venoco to ensure that the loading line may be operated in a vacuum or to implement a method for evacuating the loading line in the event of a leak. Once again, the impact analysis acknowledges that there is no change from the baseline resulting from the Project and that the current operations are in compliance with applicable SLC requirements. DEIR, p. 4.2-58. Thus, there is again no significant impact necessitated or addressed by this mitigation measure. Moreover, as discussed below, the requirement that the loading line be operated in a vacuum is technologically infeasible. In fact, the DEIR acknowledges that

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the Terminal "cannot currently operate the loading line in a vacuum" and has granted Venoco a waiver from this requirement. *Id.* Nevertheless, Venoco is willing to explore with the SLC whether it is feasible to evacuate the loading line in the event of a leak.

VEN-21

- (3) HM-4a: Requires installation of flow meters on both ends of the loading pipeline and requires that barge loading only be conducted during daylight hours when there is clear visibility. As noted above, the DEIR concedes that "[o]il spill volumes associated with the proposed Project are not estimated to increase as the same equipment will be used for the proposed Project as for the current operations. Oil spill response equipment and capabilities appear to be in compliance with regulations for the current operations." DEIR, p. 4.2-59. Once again, the impact analysis acknowledges that there is no change from the baseline resulting from the Project and that the current operations are in compliance with applicable SLC requirements. DEIR, p. 4.2-59. Thus, there is again no significant impact necessitated or addressed by this mitigation measure.

VEN-22

- (4) HM-5a: Requires Venoco to "pre-boom" all oil transfers. The DEIR provides no evidence that this mitigation measure is related to or justified by any increase in impacts caused by the Project. Moreover, the DEIR notes that this is not a requirement that the SLC normally imposes. DEIR, p. 4.2-61. Like the preceding measures, the DEIR instead suggests that this measure would be a good idea and could reduce the impact of future hypothetical oil spills. *Id.* But whether or not it is a good idea, which Venoco disputes below, it is not justified by the existence of any potentially significant impact. Accordingly, this mitigation measure is improper.

VEN-23

- (5) HM-6a: Requires Venoco to perform additional inspections of the loading line. Again, the DEIR provides no evidence that this mitigation measure is related to or justified by any increase in impacts caused by the Project. Moreover, the DEIR notes that the regular inspections already performed by Venoco have found no unacceptable corrosion levels. DEIR, p. 4.2-62. Again, the measure is simply not justified by the existence of any potentially significant impact. In fact, the only section of pipeline that is not currently internally inspected now is the section of 10" line from

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the beach to the offshore valve that connects the pipeline to the 8" diameter hose. This section of line is in service equivalent to the section of line that is accessible for GUL surveys. The susceptibility of this line to internal corrosion would be the same as that for the line that is now inspected routinely for internal corrosion. External corrosion susceptibility can continue to be assessed with the current monthly cathodic protection readings on the line. Thus, there is no justification for increased inspections. Accordingly, this mitigation measure is improper.

VEN-24

- (6) HM-9a: Requires Venoco to replace or convert the barge Jovalan with a double-hulled barge by 2010. Again, the DEIR provides no evidence that this mitigation measure is related to or justified by any increase in impacts caused by the Project. Instead, it observes that double-hulled barges are five times less likely to cause an oil spill upon a grounding, collision or other accident and that the risk of an oil spill would be a significant impact. DEIR, p. 4.2-66. Even the conditional probability of an oil spill proposed by the DEIR is less than one-half of that considered in other mitigation measures, because this measure would not be implemented until 2010, only three years before the end of the Lease. Because the risk of oil spill is not increased by the Project, this measure is simply not justified by the existence of any potentially significant impact. Accordingly, this mitigation measure is improper.

VEN-25

- (7) AQ-2a, 2b: Requires Venoco to install emission control devices on Terminal tanks and on the barge Jovalan, in order to "reduce potential for accidental releases of odorous compounds." DEIR, p. 4.3-24. As discussed above, however, there is no evidence of any potentially significant impact justifying this mitigation measure. To the contrary, the SBAPCD analyzed Venoco's Terminal and barge operations and found only one of over 100 complaints was actually linked to the operations of the Terminal and none was linked to the barge. DEIR, pp. 4.3-13, 4.3-14, 4.3-23. It also found that there was "no obvious correlation between observed spikes of hydrogen sulfide and barge loadings." DEIR, p. 4.3-13. Moreover, there is no logical connection between any such impacts and additional emission control devices on Terminal tanks. Because there is no evidence of any odorous impact from the asserted increased barge loadings, this mitigation measure is improper.

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VEN-26

- (8) WQ-2b: Requires Venoco to develop site-specific Storm Water Pollution Prevention Plan. DEIR, p. 4.4-32. There is no evidence of any potentially significant impact justifying this mitigation measure. As discussed above, the impact discussion fails to identify any increased risk above the baseline, but simply contends that the continuation of the Lease would "extend" whatever risk currently exists. To the extent that a SWPPP is otherwise required by applicable law, Venoco will prepare the same, but in the absence of such requirement or any impact justifying the additional burden, the mitigation measure is improper.

VEN-27

c. Mitigation Measures Outside of SLC Jurisdiction.

One of the proposed mitigation measures is improper and must be rejected because it is outside of the SLC's jurisdiction to impose. CEQA §21081(a)(1). Consistent with Section 210981(a)(1), it is appropriate to reject a mitigation measure if the changes or alterations proposed by the measure "are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency." One of the measures proposed by the DEIR falls into this category.

- (f) HM-9a: Requires Venoco to replace or convert the barge Jovalan with a double-hulled barge by 2010. DEIR, p. 4.2-66. The DEIR acknowledges that, under existing permits "the barge Jovalan is the only barge allowed to transport oil from the EMT". DEIR, p. 2-17. It further acknowledges and extensively discusses the unique vapor recovery system on the barge, approved by the SBAPCD. DEIR, pp. 2-17, 2-18. It does not disclose that the vapor recovery system is patented (by PSML, the owner of the Jovalan) and it is the only system approved by the SBAPCD for such a barge. As a result, replacing the barge Jovalan is not within Venoco's (or the SLC's) control. It would not merely require acquiring a new barge but acquiring and installing on the barge a new vapor recovery system acceptable to the SBAPCD. Thus, acquiring a new double-hulled barge that would be permitted to transmit oil from the Terminal is within the jurisdiction of the SBAPCD and not the SLC.

d. Infeasible Mitigation Measures.

Several of the proposed mitigation measures are improper and must be rejected because they are infeasible, for economic, legal, technological or other considerations. §21081(a)(2). Specifically, it is appropriate to reject a mitigation measure under CEQA if specific "economic, legal, social, technological, or other considerations, . . . make infeasible the

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mitigation measures" and "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." §21081(a)(2), (b). Several of the measures proposed by the DEIR fall into this category:

- VEN-28
- (1) HM-3a: Requires Venoco to ensure that the loading line may be operated in a vacuum or to implement a method for evacuating the loading line in the event of a leak. Venoco does not believe that it is technologically or economically feasible to operate the loading line in a vacuum. Venoco is willing to investigate if there is a feasible method (A) for evacuating the loading line from shore or (B) for the barge, even while empty, to pump seawater to the Terminal in the event of a leak in the pipeline.
- VEN-29
- (2) HM-4a: Requires installation of flow meters on both ends of the loading pipeline and requires that barge loading only be conducted during daylight hours when there is clear visibility. The recommended leak detection system would be infeasible and no better than the current system. This is because a system approaching 2% accuracy must rely on hourly or longer averages; in order to obtain the stated level of accuracy. Any shorter time interval would have excessive variations, causing false readings and unwarranted shutdowns of the system. But a 2% leak threshold for hourly average measured flows would amount to 84 barrels. This size of a leak would be readily apparent under the current human observation method by both sight and smell, even at night. The 2% leak detection threshold may be feasible for continuous pipeline operations of high volume over longer distances, but is simply infeasible and inappropriate for batch operations such as the loading line.
- Loading the barge only during the day when there is clear visibility would be both infeasible and counter-productive. As acknowledged by the DEIR, it takes 13 to 17 hours to fill the barge at currently approved fill rates. DEIR, pp. 2-11, 2-22. If barge loading is limited to clear daylight hours, a barge could not be fully loaded in a single day. Either the barge would have to depart before it is fully loaded (short loads), in which case more barge trips would be required to handle the same capacity, or the barge would need to remain at the mooring all night until loading operations could resume the next day (or perhaps several days if the weather is excessively overcast). Either requirement would increase emissions associated with barge loading (increased

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operating time for the barge, tug and response vessels and increased time for seep oil to accumulate at the mooring site) and all other impacts which the DEIR associates with increased barge trips or increased operation of the barge. Keeping the barge moored and half-loaded could also increase the risk of an accident. Thus, this mitigation measure would be technologically and economically infeasible and would produce its own potentially adverse environmental consequences.

VEN-30

- (3) HM-5a: Requires Venoco to "pre-boom" all oil transfers. As recognized by the DEIR, this requirement is more typical of offloading a barge at an onshore facility. Access to the barge is assured at all times from the pier even with the boom deployed. A similar pre-boom requirement for the barge Jovalan would seriously impair the ability of response vessels to access the barge. Thus, the measure could endanger marine safety and increase the risk of accidents.

In addition, natural seeps would soil the boom material with each load, thereby presenting a significant challenge for proper cleaning and storage between uses. Pulling the boom after each loading operation would increase the likelihood of odors as tar balls from the seeps would be partially removed with the boom. The barge time in the mooring would also be lengthened by the time required to set and retrieve the boom and this would increase emissions. Thus, this mitigation measure would be technologically and economically infeasible and would produce its own potentially adverse consequences.

VEN-31

- (4) HM-6a: Requires Venoco to perform additional inspections of the loading line. The pipeline as it is currently constructed simply will not allow for pigging operations because three current elbows near and in the surf zone prevent an inspection tool from passing through. The only alternative would be to shut down the pipeline and rebuild it within a sensitive area to remove the elbows. This would be both legally and economically challenging, and would require permits from the County and the Coastal Commission. The tethered pigging operation mentioned in the DEIR would have the same technological limitations in negotiating the mitered elbows, and would need a pig launching area. Venoco is unaware of a domestic company that offers this type of intelligent pig and discussions with its current supplier indicates that they are years

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away from offering such a system. Thus, this proposed mitigation measure is not currently technologically feasible.

VEN-32

- (5) HM-9a: Requires Venoco to replace or convert the barge Jovalan with a double-hulled barge by 2010. For much the same reasons discussed in the previous section, this measure would be technologically and perhaps legally infeasible. The DEIR acknowledges that, under existing permits "the barge Jovalan is the only barge allowed to transport oil from the EMT". DEIR, p. 2-17. As discussed, the vapor recovery system is patented (by PSMI, the owner of the Jovalan) and it is the only system approved by the SBAPCD for such a barge. Venoco is not aware of any other technology that is likely to be approved by the SBAPCD. Moreover, it would not be technologically feasible to retrofit the Jovalan as a double-hulled barge. Accordingly, this measure is not technologically feasible.

VEN-33

- (6) AQ-2a: Requires Venoco to install emission control devices on Terminal tanks, in order to "reduce potential for accidental releases of odorous compounds." DEIR, p. 4.3-24. Venoco believes that installing carbon canisters on the tank vents, especially when the barge is loaded, could create a serious safety issue. Specifically, this measure could result in creating a combustible mixture in pockets of the tank vapor space or vent piping. A far safer remedy would be for Venoco to visually inspect the tank periodically for signs of floating roof failure (liquid on roof) and Venoco would be willing to perform such additional inspections. Accordingly, this proposal is potentially dangerous and infeasible.

VEN-34

- (7) AQ-2b: Requires Venoco to install proximity switches on the Jovalan's PSV's, to prevent the PSV's from opening due to overpressure, in order to "reduce potential for accidental releases of odorous compounds." DEIR, p. 4.3-24. The mitigation measure would create a serious safety hazard to the extent it prevented the PSV's from opening due to high pressure in the hold. The measure is also unnecessary because the barge already has full time monitoring of hold pressure and if the hold pressure rises, loading operations must cease, even before the PSV's open due to hold overpressure. Accordingly, this proposal is potentially dangerous and infeasible.

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- (8) BIO-5g: Requires Venoco to implement a contingency plan for recognizing and avoiding marine mammals. DEIR, pp. 4.5-87 - 89. Although a contingency plan could be feasibly developed to accomplish the basic goals of the measure, the specific elements of the measure would not be practical or feasible. First, loading of the Jovalan does not have a predictable schedule allowing trained marine observers to know when they would be required. Instead, they would need to be on call 24 hours a day during the 10-day periods that Venoco is advised that the Jovalan will be available for loading. The support vessels may be out to sea when they are called to assist the Jovalan and there would be no practical way for observers to board. The only other available alternative would be for marine observers to join the crew of the tug full-time and stay with the Jovalan on its voyages north and south. This, however, would be within PSMT's, not Venoco's control. In any event, having marine observers on board would require safety approvals by MARSEC and appropriate background checks. While providing training to the Jovalan crew would be feasible, having outside observers would not be.

## II.

CONCLUSION

VEN-36

For the reasons set forth above, we respectfully request that the SLC either reverse its decision that an EIR is needed for the Project, or in the alternative revise the DEIR to incorporate a discussion of the Pipeline Proposal as an integral part of the Project. Failing either of these two alternatives, at a minimum the DEIR must be significantly revised to address the other concerns set forth above.

Thank you for your attention to this matter. We look forward to discussing these issues further with you.

Sincerely,



Mark A. Niflikman

for SHEPPARD, MULLIN, RICHTER &amp; HAMPTON LLP

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 cc: Mr. Stephen A. Greig



**RESPONSE TO COMMENT SET 16: VENOCO, INC.**

VEN-1 First, the initial application for what is now called “Ellwood Oil Pipeline Installation and Field Improvements” (EOPIFI) was submitted to the California State Lands Commission (CSLC) on June 6, 2000, and staff issued an incomplete letter July 5, 2000. The next submission by Venoco was February 22, 2001, with a similar incomplete letter March 23, 2001. The third submission was December 28, 2001, with staff’s response January 24, 2002. The fourth submission was August 1, 2005, with staff’s response August 31, 2005. The last submission was March 1, 2006, with staff deeming the application complete on March 30, 2006. The application for a new lease until 2013 for the Ellwood Marine Terminal (EMT), was initially received February 18, 2003, and ultimately deemed complete July 2, 2003, and a Draft EIR was published July 31, 2006.

Staff appreciates the irony of this comment as it made every attempt to consolidate Venoco’s various plans and proposals to facilitate a more consolidated review; the above discussion illustrates the timing of the relevant Venoco applications that precluded staff’s ability to do so.

Second, the completion of the EMT EIR will allow the terminal to be operated consistent with environmental protection from this point forward rather than without such protection until the CSLC’s consideration of the EOPIFI, which, under the present schedule, would occur no earlier than March, 2008. Furthermore, the CSLC’s more immediate consideration of the EMT would ensure that Venoco would have the means to export oil from Platform Holly production should, for whatever reason, the EOPIFI not go forward.

VEN-2 The EMT Draft EIR (DEIR) does not analyze any aspect of the EOPIFI for the reasons stated above. In point of fact, the EOPIFI proposes the decommissioning of the EMT rather than its continuation to 2013, which is proposed in Venoco’s application for the new EMT lease. At this juncture, the EOPIFI is only a “reasonably foreseeable project”, hence its recognition in the cumulative analysis within the EMT DEIR. To the second point of the comment, a potential pipeline transportation option would only be a possibility of the “No Project Alternative.” It is clear from the description of the No Project Alternative in the document that the

exercise of either a truck or pipeline transportation option would be a consequence of the No Project Alternative independent of the CSLC's potential, eventual consideration of the EOPIFI. Finally, the impacts of a pipeline transportation option are, as stated above, considered in the EMT DEIR as a consequence of the No Project Alternative rather than as a consequence of the continued operation of the EMT (Project). Information about each disparate proposal (EMT and the EOPIFI) has been and will be utilized to the maximum extent feasible to complete and inter-relate each respective analysis.

VEN-3 Section 15301, State CEQA Guidelines, cannot be read in isolation of section 15300.2 (c), which states, "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Clearly any oil spill at the EMT (unusual circumstances), especially due to its proximity to shore, would have a potentially significant impact on the environment, for example, marine and terrestrial resources, marine water quality, recreation, among others. Accordingly, the Class 1 Categorical Exemption is not appropriate in the instant case as a potential Class I impact, which may not be reduced to a level that is below significance, may result as a consequence of the continued operation of the EMT.

VEN-4 Please see the above response as to the applicability of a Class 1 Categorical Exemption to the instant case. With respect to the "temporal effect", the probability of an oil spill is a function of the time the Project is in operation. Accident and failure rates are based on the probability of an annual occurrence; thus, the longer the Project operates the higher likelihood that an accident or equipment failure would occur and result in an oil spill, which constitutes a potentially significant impact on the environment.

VEN-5 Please see response to Comment VEN-3

VEN-6 Please see responses to Comments VEN-1, VEN-2 and VEN-3.

VEN-7 Section 15125 (a), State CEQA Guidelines states in relevant part, "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of

preparation is published,...” This standard is appropriately applied to the operations of EMT, for example, its throughput, barge loadings and the like. It is also appropriate to analyze the potential operation of the EMT at higher levels of operation during the term of the proposed lease up to the level authorized by the Santa Barbara Air Pollution Control District, i.e., 13,000 BPD, to address the whole of the potential activities/impacts.

Last, the EMT would be authorized to operate until 2013 and would therefore continue to be exposed to risks of events such as earthquakes, for example, resulting from the geology of the region. The function of the environmental analysis is to determine potentially significant impacts to the environment from facilities/operations at the EMT as well as to the EMT from the environment, particularly if such effects on the project may precipitate a potentially significant environmental impact, and develop appropriate mitigation to reduce such impacts, if possible, to a level below significant.

VEN-8 As described on page 2-3 of the DEIR,

“That lease was subsequently terminated, and the current State lease was executed with Aminoil, Inc., for a 10-year period beginning March 1, 1983, with two renewal options of 10 years each. The lease was then assigned to various entities and, on July 11, 1997, the CSLC approved the assignment of the State lease to Venoco. Since March 1993, the CSLC has been granting one-year extensions of the lease. Venoco has notified the CSLC that it wishes to exercise its last 10-year lease renewal option, as provided in the State lease, to extend the State lease through February 28, 2013. The CSLC lease, if authorized, will expire in 2013, and Venoco must cease operations or apply for a new lease at that time.”

The document analyzes the last 10 year term of the lease, which would begin as of 2003 and extend to 2013.

Further, with regard to **Article 9. Contents of Environmental Impact Reports**, the provisions of section 15126.6 (e) (1), State CEQA Guidelines state, in relevant part, “The specific alternative of ‘no project’ shall also be analyzed along with its impact.”

VEN-9 See response to Comment 7. We concur with the relevant language of the State CEQA Guidelines and observe that the determination of probability is one of the more recognized “quantitative” sciences and that, with respect to the substances involved, i.e., hazardous materials, any “increase” in probability or volume is potentially significant in a near shore marine environment.

VEN-10 Please see responses to Comments 1 and 2 above. In addition, the concept of “piecemealing” is misapplied to this situation. Venoco has submitted two different applications, one for EMT lease renewal and another for the Ellwood Oil Pipeline Installation and Field Improvements, which propose the decommissioning of the EMT upon construction of the proposed pipeline. These projects are wholly independent and can be considered in and of themselves. The EMT lease renewal could move forward regardless of the status of the Ellwood Oil Pipeline Installation and Field Improvements Project. In fact, as indicated in the response to Comment VEN-1, the CSLC’s more immediate consideration of the EMT would ensure that Venoco would have the means to export oil from Platform Holly production should, for whatever reason, the EOPIFI not go forward.

VEN-11 Please see response to Comments 3, 4 and 7 above. As Venoco acknowledges in Comment VEN-8, the CSLC may require ‘reasonable terms and conditions’. In addition to the reasons previously stated herein, the preparation of an EIR affords the CSLC the appropriate medium to determine and frame such reasonable terms and conditions.

Staff respectfully disagrees with each of the legal points raised in this comment and believes they are better addressed through another process other than the CEQA process. Accordingly, the cited letters from Venoco and relevant responses by the staff of the CSLC will be placed in the administrative record.

VEN-12 See response to Comment 7. The document does not contest the fact that the EMT is permitted to operate at a maximum of 13,000 BPD, but also records that, at the time of the publication of the NOP, as well as historically (see Table 2-2, page 2-12 of the DEIR), the EMT

consistently operated at not even one-third of such permitted throughput.

Contrary to the representations, each resource section of the DEIR within Section 4 begins with a discussion of the “Environmental Setting”, i.e., baseline, pertinent to the resource area examined. For the section referenced, Section 4.5, please refer to Section 4.5.1 at page 4.5-1 of the DEIR.

Staff believes that the document is in full conformance with sections 15002 (a) and (b) of the State CEQA Guidelines and that pursuing the interpretations of Venoco would frustrate the very purposes of these sections.

VEN-13 See responses to Comments 8 and 11 above.

VEN-14 See response to Comment 12 above. With respect to the example of beach scour, as we stated in response to Comment 7 above, “The function of the environmental analysis is to determine potentially significant impacts to the environment from facilities/operations at the EMT as well as to the EMT from the environment, particularly if such effects on the project may precipitate a potentially significant environmental impact, and develop appropriate mitigation to reduce such impacts, if possible, to a level below significant.”

The State CEQA Guidelines section 15064 (a) states, in part, “Determining whether a project may have a significant effect plays a critical role in the CEQA process.” (emphasis added) Subsection (b) of this section provides, in part, “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved...” (emphasis added) The CEQA does not demand certainty or a specific event as a precursor of an examination of the potential that a project may have a potentially significant effect on the environment.

In Comment 10, the CSLC is urged by Venoco to consider the “whole of an action”, yet in this instance, Venoco indicates that inclusion of a description of the onshore components required for the operation of the

EMT within Section 2.3, Current Operations of the Project Facilities is not appropriate. Staff respectfully disagrees with the latter.

VEN-15

The term “significance” is used in these tables and throughout the DEIR to characterize the magnitude of the projected impact. For the purposes of this EIR, a significant impact is a substantial or potentially substantial change to resources in the local project area or the area adjacent to the project in comparison to the thresholds of significance established for the resource or issue area. In the discussions of each issue area, criteria used to distinguish between significant and insignificant impacts are provided. Please refer to Section 4, Environmental Analysis, in the DEIR for a more detailed discussion.

The significance criteria listed in this comment address either extension of life impacts, i.e., the impact or threat currently exists and will be extended by the lease renewal, or represent clear thresholds that would result in a significant environmental effect. For example, the creation of an objectionable odor would violate Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 303 (Nuisance). Due to frequent odor complaints, the APCD issued Abatement Order No. 99-6(A) on April 14, 1999. The Abatement Order included measures that targeted reduction and elimination of nuisance odors from the named facilities. Clearly, the creation of objectionable odors in the past has resulted in a significant effect on the environment. Extending the EMT lease increases the likelihood that such an event would occur again.

Along similar lines, a potential accident that could result in an injury or fatality is considered significant. The DEIR evaluated a wide range of potential accidents, probabilities and consequences, and found that the 10-year lease extension would increase the likelihood of an accident that could result in an injury or fatality.

Other significance criteria noted in this comment are based on consistency with Federal, State or local regulations. Clearly, any action that is inconsistent with existing environmental regulations would represent a potentially significant environmental effect.

The thresholds used in the DEIR are fairly conservative in some cases, but would not be considered vague. For example, increasing the

- 1 probability of an oil spill is self explanatory. Had the DEIR found that the  
2 probability of an oil spill decreased as a result of the project, a  
3 beneficial impact would have been noted.
- 4 As noted previously, the potentially affected environmental setting  
5 (baseline) and incremental effect of the Project were correctly  
6 characterized as discussed in the responses to Comments 7 and 9.
- 7 VEN-16 The comment mischaracterizes the analysis of two impacts, cultural  
8 and visual resources, each of which are discussed below.
- 9 In the cultural resource impact example, the comment reveals a  
10 fundamental lack of understanding as to how the impact was evaluated.  
11 As noted in the impact discussion, the lease extension would result in a  
12 continuation of potential onshore oil spills from the EMT tanks and line  
13 96. As noted above, this is an extension of life impact where a decision  
14 to extend the lease would also extend the probability that an oil spill  
15 could occur. If the lease is not extended, the possibility of an oil spill  
16 from the EMT tanks and Line 96 would cease. The comment is correct  
17 that the location of the two nearby cultural resources sites were not  
18 disclosed, but this is required under the CEQA in order to prevent site  
19 disturbance.
- 20 Regarding the visual resource impact, the DEIR clearly noted the  
21 incompatibility of industrial operations with the surrounding land uses  
22 and visual character. In evaluating the lease extension, this  
23 incompatibility would continue, and when comparing existing baseline  
24 conditions to permitted levels, the frequency of this incompatibility could  
25 also increase. This impact is far from speculative and is clearly based  
26 on the land use and the visual character of the area.
- 27 VEN-17 Thank you for this information.
- 28 VEN-18 Please see the response to Comment 14.
- 29 VEN-19 Again, please see response to Comment 14. We concur, however, that  
30 a better measure of seismic activity and potential infrastructure damage  
31 would be a ground acceleration of 13 percent of gravity (0.13 g). GEO-  
32 5a will be modified to include this seismic ground acceleration level

(see pages 4-12 and 4-47). This modification affects neither the potential for an impact to occur nor the mitigation required.

VEN-20

Please see response to Comment 7. Although the spill sizes would remain the same for the proposed Project relative to the current operations, the frequency of larger spills from the loading pipeline would increase due to the increased number of barge loadings and the increased time that the loading line is operated under pressure and with flow. (see Section 4.2.4, Increased Spill Probability). As indicated in Table 4.2.11, ruptures of the marine loading line would increase in probability from 0.9% to 3.2%. This increase in probability would be considered a significant impact.

The current operations are not equipped to operate the marine loading pipeline in a vacuum. Modifications to the pipeline arrangement could be made which would allow the pumps to be operated to pump the marine loading line contents back into the onshore tanks. This would depend on the pumps ability to operate in this manner. An option, as discussed in the rationale for mitigation measure HM-3a, would be to run the barge pumps instead of the onshore pumps, which would pump seawater into the pipeline from the barge end, and effectively evacuate the pipeline into the onshore tanks, thereby filling the marine pipeline with seawater. This procedure is described in the Venoco EAP. However, the barge is not capable of doing this unless the barge is full as the seawater intake for the barge pumps is above the water line unless the barge is full and sitting low enough in the water (as per discussions with the barge operators). The mitigation is to ensure that the barge can pump water even when it is empty (at the start of a loading operation).

VEN-21

Although the spill sizes would remain the same for the proposed Project relative to the current operations, the frequency of larger spills from the loading pipeline would increase due to the increased number of barge loadings and the increased time that the loading line is operated under pressure and with flow. (see Section 4.2.4, Increased Spill Probability). As indicated in Table 4.2.11, ruptures of the marine loading line would increase in probability from 0.9% to 3.2%. The significance criteria say that an impact is significant if "Operations would increase the probability



- 1 or volume of oil spills into the environment". This increase in probability  
2 would be considered a significant impact.
- 3 VEN-22 Please see responses to Comments 3, 4, 7, and 9. The DEIR states at  
4 page 4.2-28, lines 14-17, "The highest probability of impact from a spill  
5 at the terminal is the coastline adjacent to the terminal operations.  
6 Depending on the meteorological conditions, the MMS GNOME model  
7 estimates that up to 69 percent of spilled oil would end up on the  
8 beaches. See Appendix C for details of the oil spill modeling." At page  
9 4.2-61, lines 28-31, the document states, in part, "the presence of a  
10 boom during loading would reduce the consequences of a spill as a  
11 boom would already be in place if a spill occurred. Booms are  
12 specifically designed for the offshore and deep water environment and  
13 are able to remain effective at wave heights to 15 feet (4.5 m) (Slickbar  
14 2005)." As such, the mitigation is both proper to prevent a potentially  
15 significant impact as described above and feasible.
- 16 VEN-23 Please see responses to Comments 3, 4, 7, 9, 20 and 21. In addition,  
17 although the presence of cathodic protection reduces the frequency of  
18 corrosion related spills and reduces the rate of corrosion, it is normally  
19 in addition to, not a replacement for, internal inspection or pressure  
20 testing of pipelines. This is reinforced by State or Federal pipeline  
21 regulations. The beach area and offshore portions of the pipeline are  
22 subject to significantly different conditions than the sections of pipeline  
23 which have been inspected.
- 24 VEN-24 First, it is not accurate to state that the risk of an oil spill does not  
25 change with the proposed Project. Risk is a combination of both spill  
26 volume and frequency. As stated previously, the frequency of an oil  
27 spill, due to additional barge traffic, would increase for the proposed  
28 project. Spill volumes would remain the same. This would be a  
29 significant impact. We are, nonetheless, re-evaluating the context of the  
30 Barge Jovalan with respect to requirements for vessel conversions from  
31 single to double hull configurations.
- 32 VEN-25 Please refer to responses to Comments 33 and 35 below.
- 33 VEN-26 Please see response to Comment 14. The DEIR, beginning at lines 31-  
34 32 of page 4.4-20 provides a discussion of the Porter-Cologne Water

Quality Control Act (CWC section 13000 et seq.; CCR Title 23, Chapter 3, Chapter 15) and concludes that, “The EMT is not covered by an existing industrial SWPPP.” As indicated at page 4.4-32 of the DEIR, “MM WQ-2a would minimize potential oil spill-induced water quality impacts of a nearby dune swale pond, surrounding wetland area, Devereux Slough, and underlying groundwater resources. MM WQ-2a would minimize potential impacts associated with small oil spills and contaminated storm water releases by providing site-specific information and management practices regarding on-site drainage and protection of nearby water resources.”

VEN-27      The CSLC is the “lead agency” for the DEIR on the proposed Project as described in section 15050, State CEQA Guidelines. As provided, in part, by the provisions of section 15050 (b), “....Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.” Venoco misrepresents the intent and provisions of section 21081 of the California Public Resources Code (the CEQA). A lead agency is required by the cited section to, if it intends to approve a project for which an EIR, which identifies one or more potentially significant environmental impacts, has been prepared, make one or more of the findings specified in section 21081. Contrary to the representation of Venoco, if the CSLC were to include the referenced mitigation measure in the adopted Mitigation Monitoring Program, it would make Findings 1 and 2. In the latter finding for the referenced impact, the SBAPCD would be specifically designated as the relevant “public agency”.

VEN-28      Section 15364, State CEQA Guidelines, defines “feasible” as, “...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental legal, social, and technological factors.” We believe, within this definition, HM-3a is feasible, a concept that appears to be supported by Venoco’s comment. Please also see response to Comment 20.

VEN-29      Current leak detection practices at the EMT involve inaccurate hand measurement of barge compartment volumes on an hourly basis at the most. Meters at both ends could provide instantaneous measurement

1 that, once pumping rates are established and the transient period of line  
2 pack is completed (about 5-10 minutes), could provide for balancing on  
3 a minute by minute basis. The installation of flow meters would only be  
4 required on the barge end as there is an accurate, LACT meter on the  
5 EMT pump end that is used to balance with the hand measuring on the  
6 barge end. Connection of the EMT meter and a new barge meter to a  
7 computer system would be a technologically and economically feasible  
8 system as numerous balancing type systems are installed today on  
9 pipelines throughout the region.

10 We concur that operation of the barge safely during daylight hours  
11 would be difficult as the barge loading times exceed daylight hours for a  
12 good portion of the year. Accordingly, mitigation measure HM-4a has  
13 been modified to require operator attendance during all loading  
14 operations (see pages 4-21 and 4-46).

15 VEN-30 See response to Comment 22. Deployment of a boom would have a  
16 substantial benefit on minimizing potential environmental impacts  
17 associated with an oil spill. In order to accommodate safety concerns,  
18 mitigation measure HM-5a will be modified to allow for only partial  
19 booming of the barge during loading operations (see pages 4-22 and 4-  
20 46). Clearly, the major concern is preventing spilled crude oil from  
21 reaching the shoreline, while vessels approaching the barge generally  
22 approach from the ocean side. Therefore, the modified measure will  
23 include boom installation on three sides of the barge, leaving one side  
24 of the barge open for response vessel access. This modification will not  
25 diminish the boom's capability to protect the shoreline.

26 Potential increases in support vessel emissions would be insignificant  
27 during boom deployment and would be more than offset by the benefit  
28 of minimizing potential oil spill impacts. Mitigation measure HM-5a will  
29 be revised to allow for oil loading activities to commence before the  
30 barge is completely boomed (see pages 4-22 and 4-46). Just having  
31 the support vessel deploying the boom during initial barge hookup and  
32 loading activities clearly gives Venoco a jump on response activities in  
33 the event of a spill during that period. Since the barge will not be  
34 boomed on all sides, the barge will be able to depart before the boom is

- 1 retrieved. Therefore, the time that the barge would be moored would  
2 not change.
- 3 Finally, tar balls from natural seeps are already present at the EMT  
4 regardless of boom deployment, and already contribute to baseline  
5 odor impacts in the area. The deployment of booms and subsequent  
6 collection of some seep material would not significantly increase  
7 potential odor impacts since most of the seep material reaches the  
8 shoreline and creates odors regardless of Venoco's activities. It is likely  
9 that the collection of some seep material in the booms would actually  
10 result in a reduction of onshore odor impacts.
- 11 VEN-31 HM-6a requires that the Applicant investigate the retractable pig  
12 technologies and utilize them if applicable. The report concedes that  
13 the technologies are new and may not be applicable to this pipeline.  
14 The mitigation measure also directs the applicant to conduct visual  
15 inspection for the offshore portion of the pipeline route and to conduct  
16 pressure testing as per CSLC class II pipeline requirements (see Article  
17 5.5 under the CSLC Marine Oil Terminal Regulations; available at:  
18 [http://www.slc.ca.gov/Regulations/Article\\_5-5.html](http://www.slc.ca.gov/Regulations/Article_5-5.html)).
- 19 VEN-32 See response to Comment 24 and 27. We are also aware that PSMI  
20 operates a number of barges along the west coast, some of which are  
21 double-hulled and could be equipped with vapor recovery technology  
22 that would satisfy the requirements of the SBCAPCD.
- 23 VEN-33 Periodic visual tank inspection has not been an effective method of  
24 controlling vapor emissions from the tanks in the past. However, a more  
25 rigorous inspection requirement would likely achieve the desired vapor  
26 control effectiveness. Therefore, mitigation measure AQ-2a has been  
27 revised to allow some flexibility in how Venoco controls vapor emissions  
28 from the EMT storage tanks (see pages 4-35 and 4-49). Specifically,  
29 the exact method of vapor control has not been identified, but will  
30 instead be defined by a performance criterion. In addition, an option for  
31 a rigorous visual inspection program has been included.
- 32 VEN-34 The installation of proximity switches would not prevent the PSV's from  
33 opening, but would only serve to notify the operator of a pressure  
34 buildup and shut down pumping to prevent a pressure build-up that

- 1 would result in the PSVs opening and releasing hydrocarbon vapors to  
2 the atmosphere. However, in order to address Venoco's concerns,  
3 mitigation measure AQ-2b has been modified to simply require  
4 pressure monitoring and pump shutdown when high pressures are  
5 observed, thus achieving the desired prevention of emissions from the  
6 PSVs (see pages 4-35 and 4-50).
- 7 VEN-35 Although MM Bio-5a allows for the possibility of training and deploying  
8 independent, or outside marine mammal observers, this mitigation  
9 measure does not exclude the possibility that the marine mammal  
10 observers could be comprised entirely of members of the Jovalan and  
11 support vessel crews. It is Venoco's prerogative how they choose to  
12 meet the various training and performance requirements of MM Bio-5a.
- 13 VEN-36 Please see responses to Comments 1-3. In conclusion, for all the  
14 reasons stated within the responses herein, we believe that the  
15 document, as revised, conforms with the spirit, intent and provisions of  
16 the CEQA and the State CEQA Guidelines.